

REMARKS

For the Examiner's convenience and reference, Applicant's remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action.

STATUS OF THE DRAWINGS

The drawings have been found acceptable to the Examiner.

STATUS OF THE SPECIFICATION

The Specification has been found acceptable to the Examiner.

STATUS OF THE CLAIMS

Claims 1, 5-8, 11-14, 17-22, and 25-30 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application 2005/0081091 of Bartfai (hereinafter "Bartfai"). Claims 9 and 17 have been objected to for punctuation informalities. No Claims are being canceled. No new claims have been added. No new matter has been added.

CLAIM AMENDMENTS

Claims 9 and 17 have been amended to correct punctuation informalities. Applicants submit that these amendments overcome objections and place Claims 9 and 17 in condition for allowance.

RESPONSE TO CLAIM REJECTIONS UNDER 35 U.S.C. §102(e)

Claims 1, 5-8, 11-14, 17-22, and 25-30 stand rejected under 35 U.S.C. § 102(e) as anticipated by Bartfai. Applicants traverse this rejection.

Applicants respectfully assert that Bartfai is not valid prior art because the present invention was conceived and reduced to practice before Bartfai's effective prior art date. Applicants further submit that the Bartfai reference fails to qualify as prior art under 35 U.S.C. §102(e), §102 generally, or §103 for reasons set forth below.

A patent or publication reference can anticipate the present application under 35 U.S.C. §§102(a), (b), or (e), and §103. To anticipate under 35 U.S.C. §102(e), a publication date of the reference must predate the date of invention of the present application.

Under the current applicable law, 35 U.S.C. §102(e) permits a publication of a U.S. Application to be used as a prior art reference as of its U.S. filing date. See MPEP §706.02(a)(II)(B). Bartai's filing date is **September 29, 2003**. Based on the affidavits and evidence submitted herewith, Applicants submit that Applicant's date of invention is at least as early as **September 24, 2003** and thus antedates the Bartai reference. Applicants are submitting herewith an affidavit from the inventor and each attorney involved in the disclosure, preparation, and filing of the Applicant's patent application under 37 CFR §1.131, MPEP §715.

These affidavits and evidence establish that the invention was conceived and fully reduced to practice through disclosure to another by at least as early as **September 24, 2003**. Specifically, the IBM disclosure document numbered SJO8-2003-0165 describes the invention. See IBM disclosure. In addition, the enclosed drawing to the patent review committee submitted by the inventors, John Thomas dated September 24, 2003, describes the main features of the invention that are recited in the independent claims. See Post Disclosure Information and drawing. For example, the drawing describes storing an original primary volser in a dump conditioning field of a secondary volume when the volser of the secondary volume is changed.

Applicants submit that Claims 1, 5-8, 11-14, 17-22, and 25-30 are not anticipated by Bartai because Bartai fails to qualify as valid prior art in view of the submitted evidence and affidavits that establish a date of invention of at least as early as **September 24, 2003**. Therefore, Applicants request that the rejection of Claims 1, 5-8, 11-14, 17-22, and 25-30 under 35 USC §102(e) in view of Bartai be withdrawn.

CONCLUSION

Applicants request that the proposed amendments be entered to clarify the claimed invention and place the case in condition for allowance for the reasons set forth above. These amendments further clarify and distinctly set forth what the Applicant regards as his invention.

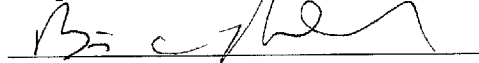
Given that dependent claims 2-7, 9-13, 15-21, and 23-29 depend respectively from amended independent Claims 1, 8, 14, and 22, Applicant respectfully submits that Claims overcome the rejections raised above.

Therefore, in view of these remarks, Applicants respectfully assert that claims 1-30 are in condition for prompt allowance. Should additional information be required regarding the amendment or traversal of the rejections of the independent and dependent claims enumerated above, the Examiner is respectfully asked to notify Applicant of such need. If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

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Respectfully submitted,



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